

**BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE NORTH DAKOTA LEGISLATIVE COUNCIL**

**Amendments to N.D. Admin. Code)
Chapter 75-02-06, Ratesetting for)
Nursing Home Care (Pages 1041-1050)**

**REPORT OF THE
DEPT. OF HUMAN SERVICES
July 16, 2003**

.....

For its report, the North Dakota Department of Human Services states:

- 1. These amendments did not result from statutory changes made by the Legislative Assembly.**

- 2. These rules are not related to any changes in federal statutes or regulations.**

- 3. The Department of Human Services uses direct mail and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The department uses a "basic" mailing list for each rulemaking project that includes the county social service boards, the regional human service centers, all Legal Aid offices in North Dakota, all persons who have asked to be on the basic list, and internal circulation within the department. Additionally, the department constructs relevant mailing lists for specific rulemaking. The department also places public announcements in all county newspapers advising generally of the content of the rulemaking, of over 50 locations throughout the state where the proposed rulemaking documents may be reviewed, and stating the location, date, and time of the public hearing.**

The department conducts public hearings on all substantive rule-making. Oral comments are recorded. After the hearing, oral comments as well as any written comments that have been received are summarized and presented to the department's executive director, together with any response to the comments that may seem appropriate and a redrafted rule incorporating any change occasioned by the comments.

- 4. One individual made comments at the public hearing held in Bismarck on September 10, 2002. Written comments were received from eight individuals. The department fully considered each comment. A summary of those comments is attached to this report. The summary identifies the commentors, describes each comment, explains the department's response to each comment, and identifies changes made in the rule to address comments.**
- 5. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule amendments are anticipated to have a significant fiscal impact on the regulated community. A regulatory analysis was prepared and is attached to this report.**
- 6. The approximate cost of giving public notice and holding a hearing was \$672.61.**
- 7. The amendments to North Dakota Administrative Code chapter 75-02-06 are found in pages 1041 through 1050 of your materials. This chapter deals with how the Department calculates the Medicaid rates it pays to nursing home facilities.**

Section 75-02-06-01 was amended to provide a definition of "certified nurse aide".

Section 75-02-06-02.2 was amended to provide that the salary and employment benefits a nursing facility pays to certified nurse aides and to individuals providing assistance to residents with the activities of daily living as identified in section seventeen of this chapter may be included in the direct care cost category.

Section 75-02-06-14 was amended to clarify the payment rate that will be allowed for days when a nursing facility resident leaves the facility in order to be treated in a hospital or when the resident is absent for therapeutic leave.

- 8. A constitutional takings assessment was prepared and is attached to this report.**
- 9. These rules were adopted as emergency (interim final) rules. Emergency rulemaking was necessary because in July 2002, the Office of Management and Budget implemented an allotment by which all state agencies had to adjust their budgets to spend 1.05% less than was appropriated by the 57th Legislative Assembly and the Department's Medicaid projected shortfall was \$14 million in general funds.**

Prepared by:

**Melissa Hauer, Director
Legal Advisory Unit
North Dakota Department of Human Services
July 16, 2003**